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August 2, 2023

**BY ECF**

Magistrate Judge Arlene R. Lindsay  
United States District Court  
Eastern District of New York  
814 Federal Plaza  
Central Islip, New York 11722-4451

Re: *Kataev v. TD Bank, N.A., et al.*  
Civil Case No.: 2:22-cv-07913 (GRB) (ARL)

Your Honor:

We represent the last remaining defendant in this FCRA lawsuit, TD Bank, N.A. We write to respond to Plaintiff's August 1, 2023 letter, which requests a settlement conference to address a purported "dispute the parties have which is impeding a prospective settlement that would fully resolve the case." (D.E. 30.) Unfortunately, Plaintiff does not articulate to the Court just what "dispute" might impede the parties' "prospective settlement," so we must do so now.

Initially, TD Bank disagrees that the settlement reached after a four-hour, Court-ordered mediation session on May 2, 2023 is "prospective." The parties' agreement – which specifically required dismissal of this action by now – can and should be enforced as documented in post-mediation confirming emails consistent with Local Civil Rule 83.11(b)(7). The only "dispute" is over whether Plaintiff should execute the written settlement agreement that TD Bank first transmitted to Plaintiff's then-attorney on May 16, 2023. For reasons that have never been explained, Plaintiff has refused to sign, even as he insists upon selective performance of some of the agreement's terms that, according to Plaintiff, can be re-negotiated thereafter.

As we explained to Judge Brown in January, TD Bank has meritorious defenses to the claims asserted against it. (D.E. 15) In February 1 minute entries, however, the Court directed the parties to mediate, and so, on May 2, the parties negotiated a compromise. TD Bank was willing to abide by that agreement in May, and it remains willing today. But if Plaintiff continues to refuse to sign the written agreement and dismiss this civil action as agreed in May, then TD Bank has no option but to either file a motion to enforce the mediation settlement or renew its proposed motion to dismiss.

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It is unclear what Plaintiff hopes to accomplish with the proposed settlement conference. Plaintiff filed his August 1 letter just minutes after we asked him, yet again, when he planned to execute the settlement agreement. If the outcome of a conference is the Court directing Plaintiff to sign the agreement whose terms Plaintiff accepted before the mediator three months ago, then we welcome the opportunity for counsel to meet with the Court (there is no need to further involve our client in this process). But, respectfully, we believe such a conference wastes judicial and party resources when the resolution to the “dispute” is clear: Plaintiff either can sign and perform under the agreement, or he can unambiguously tell us that the deal is off so TD Bank can pursue appropriate motion practice.

Respectfully,

/s David T McTaggart

David T McTaggart

DTM:hs